

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

**TERRAN, LLC**

2235 Enterprise St.

Suite 160

Escondido, CA 92029

Plaintiff,

vs.

**C&C DEALS, INC.**

454 Bedford Avenue

#10

Brooklyn, NY 11249

Defendant.

: Case No. \_\_\_\_\_

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: Judge: \_\_\_\_\_

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**COMPLAINT**

Plaintiff Terran, LLC (“Terran”) states for its Complaint against Defendant, C&C Deals, Inc. (“Defendant” or “C&C”), as follows:

**NATURE OF THE CLAIMS**

1. This is an action for Copyright Infringement under the Copyright Act of 1976, 17 U.S.C. §101, *et seq.*, and Unfair Competition pursuant to 15 U.S.C. §1125(a).

**PARTIES, VENUE AND JURISDICTION**

2. Plaintiff Terran is a California company with a principal business address located at 2235 Enterprise St., Suite 160, Escondido, CA 92029. Terran is a consumer products company that, for at least the last three years, has offered various consumer goods through Amazon.com’s marketplace, such as its popular brands COLORIT gel pens, COLORIT adult coloring books, and WILD BABY plush toys (“Terran Goods”).

3. Defendant C&C is a New York corporation with a principal business address located at 454 Bedford Avenue, #10, Brooklyn, NY 11249. C&C is also a consumer products company that competes with Terran on Amazon.com's marketplace.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a), because this action arises under the Copyright Act of 1976, 17 U.S.C. §101, *et seq.* and the Lanham Act 15 U.S.C. §1121(a).

5. C&C maintains its primary place of business and regularly transacts business within the State of New York via the sale of its consumer goods to New York residents. Consequently, both general and specific personal jurisdiction are proper.

6. Venue is proper in the United States District Court for the Eastern District of New York because C&C resides or maintains its principal place of business within that judicial district, and C&C is subject to this Court's personal jurisdiction with respect to this civil action. Furthermore, a substantial portion of the acts giving rise to this case, including the infringement of Plaintiff's copyright, occurred in the Eastern District of New York, and a substantial part of C&C's property that is the subject of this action is located there.

### **FACTUAL BACKGROUND**

#### **Terran's Intellectual Property**

7. Terran first began offering its COLORIT gel pens, markers, coloring books and associated coloring products on approximately July 10, 2015. Since that date, Terran has built significant brand awareness regarding its COLORIT products via the use of carefully crafted product design, product packaging, color names and related marketing materials.

8. Consumers on Amazon.com looking for Terran's COLORIT products routinely utilize the names and unique design of COLORIT products and product packaging, as depicted in images filed with the United States Copyright Office, and subject to U.S. Copyright Registration Number VAu001319899, with a creation date of 2017. A copy of the official record for Copyright Reg. No. VAu001319899 from the Library of Congress is attached hereto as **Exhibit A**.

9. Since the launch of the COLORIT products, Terran has grown and worked tirelessly over the last three years to perfect its craft, and is now recognized on the Amazon.com marketplace as a premier seller of gel pens, markers, coloring books, and associated goods. Terran serves customers in all 50 states, and maintains 4.7 stars out of 5 on Amazon.com's customer review rating system, with at least nine hundred and thirty reviews received on a single COLORIT gel pen product. A screenshot showing said product and its current customer review rating is attached hereto as **Exhibit B**.

10. On March 6, 2018, Terran applied for and received U.S. Copyright Registration VAu001319899 for images of its COLORIT gel pen product designs and packaging.

### **C&C's Actions Against Terran**

11. During November of 2017, C&C began purchasing gel pen products from the same manufacturer used by Terran and offering those products on Amazon.com's marketplace in competition with Terran's gel pens, utilizing a highly similar product and packaging design, and highly similar marketing images, under the name DasKid.

12. During March of 2018, Terran notified C&C that it had filed and obtained a copyright registration for the marketing images of its gel pens and product and

packaging design. Thereafter, C&C briefly stopped offering the offending DasKid product and stopped utilizing the offending marketing materials.

13. During September of 2018, Terran noticed that C&C resumed offering the same offending DasKid products and utilizing the offending marketing materials that infringed upon Terran's copyright registration and the goodwill associated with its product and packaging designs.

14. As a result of C&C resuming sale of the offending products and utilizing the infringing designs and marketing materials, sales that would have gone to Terran were instead diverted to C&C, as customers became confused as to the source of gel pens, markers, and associated goods offered in connection with product designs and packaging pioneered by Terran.

15. C&C knew that by resuming sale of the offending products and utilizing the infringing designs and marketing materials, it was willfully infringing Terran's intellectual property rights, as it had previously been made aware of those rights and briefly halted the infringing activity.

16. At no time did Terran authorize C&C to create reproductions or derivatives of Terran's proprietary intellectual property, including its copyrights and/or product designs and packaging, and at no time did Terran authorize C&C to display or distribute such reproductions or derivatives.

17. The Defendant continues to reproduce, make derivative works of, distribute and display Terran's copyright-protected materials, continue to exploit and infringe Terran's product and packaging design in such a manner as to intentionally confuse consumers, and is utilizing Terran's proprietary intellectual property to divert sales away from Terran, causing significant damage to Terran.

**COUNT I**  
**COPYRIGHT INFRINGEMENT**  
**(17 U.S.C. §§ 106 and 501)**

18. Terran incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

19. U.S. Copyright Reg. No. VAu001319899 is an original work of authorship and Terran is the sole and exclusive owner of all right, title and interest in and to the copyright in said work.

20. Terran filed a copyright application with the U.S. Copyright Office, which registered as Reg No. VAu001319899.

21. C&C has not received any license, assignment, or other authorization to exploit and reproduce Reg. No. VAu001319899.

22. C&C had access to the images covered by Reg. No. VAu001319899, as the images have been available to the public on Amazon.com's marketplace. C&C has likewise expressed explicit interest in creating reproductions and/or derivatives of the images featured in Reg. No. VAu001319899, as such reproductions and/or derivatives were previously offered by C&C until Terran notified C&C of its exclusive rights.

23. The images utilized by C&C on its Amazon.com marketplace for gel pens, markers and/or related goods are substantially similar to the images featured in Reg. No. VAu001319899.

24. C&C has and continues to reproduce, make derivative works of, and distribute and display such reproductions and derivatives of Reg. No. VAu001319899, in violation of the Copyright Act of 1976, U.S.C. §501.

25. C&C's acts of infringement alleged herein are committed willfully and in knowing disregard of Terran's rights.

26. As a result of C&C's ongoing acts of infringement alleged herein and in accordance with 17 U.S.C. §504(b), Terran is entitled to recover from C&C the damages it has sustained, and will sustain, and any profits obtained by C&C as a result of or attributable to their infringement. At present, the amount of such damages and profits cannot be fully ascertained by Terran.

27. As a result of C&C's ongoing acts of willful infringement alleged herein, Terran is also entitled to elect to receive statutory damages, costs and attorney's fees, pursuant to §504(c).

**COUNT II**  
**FEDERAL UNFAIR COMPETITION**  
**(15 U.S.C. §1125(a))**

28. Terran incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

29. Terran has expended substantial resources, including time and money in building the goodwill associated with the COLORIT product designs and product packaging.

30. C&C have advertised, promoted and offered for sale goods featuring product designs and product packaging highly similar to those of Terran's COLORIT products, with the intent to create an association and affiliation with Terran, and to trade off the goodwill of the COLORIT goods' product design and product packaging.

31. The continued use by C&C of approximations of Terran's COLORIT product design and product packaging as set forth above constitutes unfair competition and violation of the Federal Lanham Act, 15 U.S.C. §1125(a), and violation of Terran's

exclusive rights to exploit the goodwill associated with those product designs and product packaging.

32. C&C's acts, as described throughout, constitute unfair competition with Terran in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125 (a).

33. C&C has unjustly profited by its unlawful action.

34. Terran has been and will continue to be damaged by C&C's unlawful actions.

35. C&C's conduct and acts, as alleged above, will continue to cause irreparable harm to Terran unless enjoined by the Court.

36. Damages alone will not provide Terran with an adequate remedy at law.

37. Terran has lost and is threatened with losing valuable sales, customers, its competitive advantage, and good will, and C&C's conduct and acts, as alleged above, will continue to cause irreparable harm to Terran unless enjoined by this Court.

38. Damages alone will not provide Terran with an adequate remedy at law.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Terran respectfully demands judgment against C&C as follows:

(1) Awarding Terran all of its damages for each of the alleged claims, in an amount to be determined at trial;

(2) That Terran be awarded damages in accordance with the Copyright Act of 1976, 17 U.S.C. §504(b) and as shall otherwise appear that it has sustained, and continues to sustain, as a result of C&C's copyright infringement, together with any profits obtained by C&C as a result of the copyright infringement; or, if Terran so elects, that Terran be awarded statutory damages pursuant to §504(c);

(3) That Terran be awarded its costs and attorney's fees in bringing this copyright infringement action as authorized by the Copyright Act, 17 U.S.C. §505;

(4) That Terran be awarded its monetary damages, including actual damages sustained as a result of C&C's infringement of the goodwill associated with the COLORIT product design and product packaging pursuant to 15 U.S.C. §1125(a), unfair competition, and other unlawful conduct set forth herein, together with an accounting of C&C's profits, as provided in 15 U.S.C. §1117, all in amounts to be determined at trial;

(5) Awarding Terran treble and punitive damages against C&C for their willful misconduct in an amount to be determined at trial;

(6) Awarding Terran its costs and reasonable attorney's fees and expert witness fees in this action;

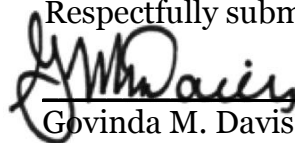
(7) Finding the case to be exceptional under 15 U.S.C. §1117(a);

(8) Awarding Terran a preliminary and permanent injunction prohibiting C&C from further infringing acts against Terran's Copyright and business goodwill, as described herein;

(9) That Defendant be directed to destroy any unauthorized copies, reproductions, or derivatives of Reg. No. VAu001319899 which cannot be returned;

(10) Such other relief to which Terran may be entitled to at law or in equity.

Respectfully submitted,



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